

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION )

NUMBER 61-1465 (a15620) )

MEMORANDUM DECISION

Change Application Number 61-1465 (a15620) was filed by Circleville Irrigation Company to change the point of diversion and place of use of 5.0 cfs of water as evidenced by ownership of a portion of 61-2000, Page 8, Sevier River Decree. The water has been diverted from the Sevier River at the following points: 1) North 500 feet and East 150 feet from the SW Corner of Section 25, T30S, R4W, SLB&M (Dalton Canal), 2) North 400 feet and West 300 feet from the SE Corner of Section 34, T30S, R4W, SLB&M (Kingston Canal), 3) South 3200 feet and East 1100 feet from the NW Corner of Section 3, T31S, R4W, SLB&M (West Ditch), and used for the irrigation of 288.10 acres of land.

Hereafter, 5.0 cfs of water is to be diverted from the Sevier River same as heretofore and Loss Creek at a point South 2900 feet and West 2000 feet from the NE Corner of Section 31, T31S, R3W, SLB&M, and used for the irrigation of 288.10 acres of land. All uses are within the NE1/4 of Section 19, T30S, R3W, SLB&M, W1/2NW1/4, NW1/4SW1/4 of Section 25; NE1/4, SE1/4 of Section 26; SE1/4SW1/4, S1/2SE1/4 of Section 36; all T30S, R4W, SLB&M, NW1/4NE1/4, NW1/4, W1/2SW1/4 of Section 1, T31S, R4W, SLB&M.

The application was advertised in the Garfield County News beginning May 10, 1990, and ending May 24, 1990, and was protested by DMADC Companies.

A hearing was held on November 15, 1990, in Panguitch, Utah. The protestants were concerned that if this change were allowed their vested and decreed rights would be adversely affected and diminished.

It appears that the applicant is proposing to have the option of using Loss Creek as a source and to irrigate lands above Lost Creek Canal.

Because the applicant will not increase the consumptive use of water over historic uses, it is the opinion of the State Engineer that the change in place of use and point of diversion should not impair the rights of downstream users.

After review of the issues and the geohydrology of the area, it is the opinion of the State Engineer that this change can be approved without impairing existing rights provided certain conditions are imposed. The State Engineer, also believes the amount of water that should be reduced from the Sevier River Diversions be based on the formula:

$$\frac{(5.0 \text{ cfs})}{(288.1 \text{ acres})} = \frac{(\text{reduction to Sevier River})}{(\text{acres irrigated from Loss Creek})}$$

It is, therefore, ORDERED and Change Application Number 61-1465 (a15620) is hereby APPROVED subject to all prior rights and the following conditions:

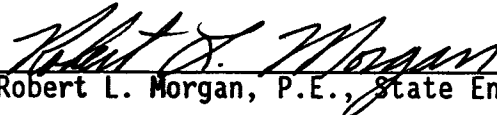
- 1) At the beginning of each irrigation season, the applicant shall determine the number of acres to be irrigated above the Lost Creek Canal. The applicant shall then reduce the flow to be diverted from the Sevier River diversions using the above formula.

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- 2) This change shall be distributed under the direction of the Sevier River Commissioner. Any additional costs associated with the distribution of this water shall be borne by the applicant.

This Decision is subject to the provisions of Rule R625-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 29th day of March, 1991.

  
Robert L. Morgan, P.E., State Engineer

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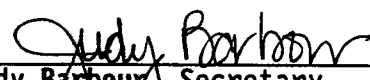
Mailed a copy of the foregoing Memorandum Decision this 29th day of March, 1991, to:

Circleville Irrigation Company  
Circleville, UT 84723

DMADC Companies  
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Lee Sim  
Directing Distribution Engineer

Ray Owens  
Sevier River Water Commissioner  
2165 South Hwy 89  
Sevier, UT 84766

By:   
Judy Barbour, Secretary